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A smear-license for government officials?

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Should government officials be free to impugn the reputation of any American they choose, with the guarantee that they cannot be held accountable, whether the attack is truthful or not?

Doubtless, most Americans aren't aware that public officials at all levels of government have that staggering power. But they do—thanks to a 1959 U.S. Supreme Court decision.

Now a little-noted slander case seems likely to focus a badly needed spotlight of this privilege.

The case, building toward a climax later this month in Federal District Court in Baltimore, has an intriguing, and perhaps confusing, element that promises to skyrocket it to national attention.

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Uncle Sam's spies, the super-secret Central Intelligence Agency, is a central figure in the drama.

The case opened in November, 1964, when a well-known Estonian emigree, Erik Heine, now living in Toronto, Canada, filed suit for slander against another prominent former Estonian, Juri Raus, now an engineer here for the U.S. Bureau of Public Roads.

Heine, widely publicized as an anti-Communist and a freedom fighter, said that Raus was spreading tales that Heine was actually a Soviet agent planted in the closely knit Estonian community on this continent.

Raus answered, in court papers, that he had indeed made the statements, and had done so because an agency of the U.S. government had given him information on Heine's background.

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The case moved routinely through legal preliminaries until January of this year, when Raus' attorneys dropped a bombshell. They filed a motion to dismiss Heine's suit on the ground that:

- Raus' information on Heine's alleged spy activities had come from the CIA.
- Raus had spread the information at the specific request of the CIA, as an employe of that agency.
- He was therefore entitled to the "absolute immunity" that a little-noted 1959 Supreme Court decision, Barr vs. Mateo, conferred on government employes performing their duties.

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In this ruling, reached by a 5-4 margin, the court said that government officials—great and small, local, state and national—could not operate properly if they had to always worry that they might be sued for something they did, wrote or said.

So the writings or utterances of such officials must be immune to attack from libel or slander suits, the court ruled, regardless of whether any charges made by the officials were malicious or not. And that lets Raus off the hook, his attorneys argued.

Under prodding by Heine's attorneys and the judge, Roszel C. Thomsen, the CIA—in an unprecedented move—came into court and admitted that Raus was indeed performing in some paid capacity or another (the CIA won't say just what) when he made his statements about Heine.

But beyond that, the CIA spokesman, Deputy Director Richard Helm, refused to go. He left unanswered such questions as:

- What proof of the charges does the CIA have?
- What business did the CIA have meddling in what some observers construe as a "domestic" situation?

On May 13, Judge Thomsen has scheduled final arguments on Raus's motion to dismiss Heine's suit. A ruling is likely soon afterward.

It is unfortunate that the CIA is involved in this case.

For it is already becoming clear that any public attention or outcry that this case evokes will be directed primarily at the CIA—which everyone seems to enjoy kicking—and not at the 1959 Supreme Court ruling, which is the real issue.

It can be rightly argued that public officials do need protection in the performance of their duties. But giving "protection" is one thing, and granting an unqualified license to smear is something else.